IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.7.2007

Coram :

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MR. JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.211 of 2000

1. The Government of Tamil Nadu
   rep. by its Secretary to Government
   Environment and Forest Department
   Fort St. George
   Chennai - 600 009.

2. The Divisional Forest Officer
   Social Forestry Division
   Salem. ... Appellants

Vs.

1. Tvl. Gem Granites
   rep. by its Partner
   Mr. R. Veeramani

2. The Government of Tamil Nadu
   rep. by its Secretary to Government
   Industries Department
   Fort St. George
   Chennai - 600 009.

3. The District Collector
   Salem. ... Respondents

Writ Appeal filed against the order made in W.P.No.5273 of 1992, dated 23.9.1999. petition under Article 226 of the constitution of India to issue a writ ofscertiorarifed mandamuss by calling for the record from the third respondent in G.O.Ms.No.618, environment and forests department dated 22.10.1991 and quash the same and consequently direct the respondents to permit the petitioner to quarry black granite in survey No.14/4A-2 in an extent of 4.64.0 hectares in survey 14/4A-2 in puthiragoundanpalaym village, Attur taluk, salem district for a period of ten years from the dated of their actual permission for quarrying

For Appellants : Mr. S. Rajasekaran
Government Advocate

For RespondentNo1.: Mr. A. Jinasenan

https://hcservices.ecourts.gov.in/hcservices/

J U D G M E N T

(Judgment of the Court was delivered by K.Raviraja Pandian, J.)

The respondents 2 and 4 in the writ petition are the appellants in this writ appeal. The first respondent herein filed a writ petition in W.P.No.5273 of 1992 seeking for the relief of certiorarified mandamus to call for the records of the third respondent in G.O.Ms.No.618, Environment and Forest Department, dated 22.10.1991 and quash the same and consequently direct the respondents to permit the petitioner to quarry black granite in Survey No.14/4A2 in an extent of 4.64.0 hectares in Survey No.14/4A2 in Puthiragoundampalayam village, Attur Taluk, Salem District for a period of ten years. The said relief was sought for in the following circumstances.

2. The first respondent/petitioner is recognised as an 100% export oriented unit for the first time in India in the year 1984 in respect of the subject quarry with 4.64.0 hectares in Survey No.14/4A2 in Puthiragoundampalayam village. The first respondent/petitioner participated in the auction and has become a successful bidder for a bid amount of Rs.25,50,010/-. The first respondent/petitioner was declared as successful bidder and by Government Order in G.O.Ms.No.1350, Industries MM B2 Department, dated 23.11.1990. The first respondent/petitioner was granted quarrying lease for a period of ten years in the said area. Pursuant to the Government Order, the first respondent/petitioner has paid the following amounts.

On 12.2.1990	tender amount	Rs. 25,50,010.00
On 11.12.1990	Security	Rs. 2,55,001.00
On 3.1.1991	Stamp Duty	Rs. 1,78,501.00
	Total	Rs.29,83,512.00

The lease deed was registered on 4.3.1991 for a period of ten years.

3. It is the further case of the first respondent/petitioner that the first respondent/petitioner even before clearing the over burden by order dated 16.4.1991, the appellants herein directed the first respondent/petitioner to stop quarrying work. Thus, the first respondent/petitioner was not allowed to quarry after that period. After a prolonged correspondence between the parties, the Government by G.O.Ms.No.618, Forests, dated 22.10.1991 ordered that the first respondent/petitioner would be permitted for quarrying on condition of paying the amount ofRs.14,329/- and a security deposit of Rs.20,000/- and the appellants herein further directed to execute another lease deed with the Forest Department, as the original lease deed was executed with the District Collector, the Revenue Department. Aggrieved by the above Government Order and the direction for execution of the supplemental agreement with the Forest Department, which is not contemplated under the provisions of the Act, the writ petition was filed. The learned single Judge after hearing the parties, has ultimately held that the Government Order in G.O.Ms.No.618, Forests, dated 22.10.1991 is not in accordance with the statutory requirement and thereby would not stand the scrutiny of the law. By holding so, the learned single Judge quashed the Government Order in G.O.Ms.No.618, Forests, dated 22.10.1991. The correctness of the said order is now assailed before this Court by filing the above writ appeal.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

4. When the matter was taken up for orders today, the learned counsel appearing for the first respondent/petitioner submits that though he has become a successful bidder and paid the huge amount in a sum of Rs.28 lakhs and odd in the year 1991, till date the first respondent/petitioner was not allowed to quarry a single piece of granite. It would be suffice, if a direction is issued to the second and third respondents to refund the amount with reasonable interest.

5. We heard the learned counsel on either side and perused the materials available on record.

6. As stated above now, though the lease has been granted in favour of the first respondent/petitioner was in the year 1991 and the lease deed has been executed on 4.3.1991, it was stated across the bar, the first respondent/petitioner was not allowed to quarry by the auction of the Forest Department, which include the proceedings dated 16.4.1991 also, at this point of time, the ten years lease period granted for the first respondent/petitioner has also expired by 17.2.2007 and nothing remains to be adjudicated about the correctness of the Government Order in G.O.Ms.No.618, Forest, dated 22.10.1991, whereby the first respondent/petitioner was directed to execute the subsequent deed, which is only for the purpose of doing quarry for the remaining period which has already been expired. There is no question for the first respondent/petitioner to quarry now. Hence, the writ appeal can be disposed of as nothing remains to be adjudicated. However, having regard to the submission made by the learned counsel for the first respondent/petitioner, this Court is of the view that the interest of justice would be served, if a direction is issued to the second and third respondents herein to consider the case of the first respondent/petitioner, who have deposited the huge amount of nearly Rs.28 lakhs and odd as early as in the year 1991 and they are not getting any reciprocal benefit from the second and third respondents by way of allowing him to quarry the granite. It would be appropriate for the second and third respondents to consider for repayment of the same as per the statutory provisions, which exercise is directed to be done within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

WEB COPY

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Government of Tamil Nadu
   rep. by its Secretary to Government
   Industries Department
   Fort St. George
   Chennai - 600 009.

2. The District Collector
   Salem.

3. The Secretart to Government
   Environment and Forest Department,
   Fort St. George,
   Chennai.9.

4. The Divisional Forest Officer,
   Social Forestry Division,
   Salem.

+ 1 cc to MR.A.Jenasenan Advocate SR.NO.46417
+ 1 cc to Spl,Govt. pleader SR.NO.46424

SSV (CO)
RD 9.8.07

W.A.No.211 of 2000

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/